

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

<b>LOUIS SHEPTIN,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. CIV-08-32-HE</b>
	)	
<b>SAINT ANTHONY HOSPITAL, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**REPORT AND RECOMMENDATION**

By order [Doc. No. 20] of March 14, 2008, United States District Judge Joe Heaton granted the motion [Doc. No. 14] by Plaintiff, Louis Sheptin, for appointment of counsel. On that same date, Judge Heaton directed the undersigned to secure such counsel [Doc. No. 21]. Over the ensuing months, numerous lawyers and law firms were contacted in a diligent effort to obtain counsel to appear on Plaintiff's behalf; no lawyer, however, has been willing to accept the appointment.<sup>1</sup> The undersigned, accordingly, must report that despite an exhaustive and good faith effort to locate counsel to appear on Plaintiff's behalf, *see Loftin v. Dalessandri*, 3 Fed. Appx. 658, 663 (10<sup>th</sup> Cir. Jan. 9, 2001), no lawyer has agreed to accept the appointment. Thus, because "[28 U.S.C.] § 1915(e) does not authorize the district court to require an unwilling attorney to represent an indigent defendant in a civil case," *id.* (citing *Mallard v. United States District Court for the Southern Dist. Of Iowa*, 490 U.S. 296, 305

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<sup>1</sup>Of notable concern to potential Oklahoma counsel was that Plaintiff is incarcerated in Illinois.

(1989)), and because no willing lawyer has been found, the undersigned recommends that the order for appointment of counsel [Doc. No. 20] be vacated.

As an additional matter, the undersigned – who granted Plaintiff’s motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) [Doc. No. 7] – has now learned through Judge Heaton’s order appointing counsel [Doc. No. 20] that Plaintiff has accumulated three strikes under 28 U.S.C. § 1915(g) and, consequently, was not entitled to bring this action *in forma pauperis* without a showing that he was in “imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). In this regard, the Tenth Circuit has recently stated,

In order to meet the “imminent danger” requirement, “the harm must be imminent or occurring at the time the complaint is filed.” *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7<sup>th</sup> Cir. 2003). In other words, allegations of past injury or harm are insufficient, *see id.*

*Fuller v. Wilcox*, No. 08-3077, slip op. at 2 (10<sup>th</sup> Cir Aug. 4, 2008). With this standard in mind, the undersigned has reexamined the allegations of Plaintiff’s complaint [Doc. No. 1] as well as the allegations of his Emergency Supplement to Complaint [Doc. No. 8] and has concluded that with respect to the only two Defendants in this matter, St. Anthony Hospital and Dr. Ronald Sutor, Plaintiff’s allegations are of past injury and, consequently, are insufficient to satisfy the imminent danger requirement.

Accordingly, it is further recommended that the court vacate the undersigned’s order allowing Plaintiff to proceed *in forma pauperis* [Doc. No. 7] and dismiss this action without prejudice unless Plaintiff either pays the full \$350 filing fee by a date to be established by

the court or demonstrates to the court through objection to this Report and Recommendation that he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

**NOTICE OF RIGHT TO OBJECT**

The parties are advised of their right to object to this Report and Recommendation by August 25, 2008, in accordance with 28 U.S.C. §636 and Local Civil Rule 72.1. The parties are further advised that failure to make timely objection to this Report and Recommendation waives their right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991). This Report and Recommendation disposes of all issues referred to the Magistrate Judge in this matter.

ENTERED this 5<sup>th</sup> day of August, 2008.

  
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BANA ROBERTS  
UNITED STATES MAGISTRATE JUDGE